IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First Appeal No. 605/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 23 , 2006

Heard Mr. S.V. Manohar, Advocate for the appellants and Mr. R. H. Chandurkar, Advocate for the respondents.

This appeal has been filed under Section 37 (1) (a) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") refusing to grant any relief to the appellants under Section 9 of the Act, challenging the impugned order dated 13th September, 2006 passed by District Judge, Nagpur in Misc. Application No.431/2006-09-27 filed by the appellants herein against respondents. Admittedly, there is an arbitration clause in the agreement entered into between the parties. It is not disputed that Shri Justice R.G. Deshpande (retired) has been appointed as

Arbitrator in respect of the disputes arising between the parties and learned Arbitrator is seized of the arbitration proceedings.

Mr. Manohar, Advocate for the appellants states that the appellants shall file application seeking interim measures under section 17 of the Act and the learned Arbitrator may be directed to consider the application on its merits without being influenced by the observations made by learned District Judge in the impugned order. He further submitted that till such an application seeking interim measures is decided, the respondents be directed not to create third party rights in respect of the suit mines.

Mr. Chandurkar, Advocate for the respondents, upon taking instructions from his clients states that he has no objection if the prayer made by Mr. Manohar is granted.

Accordingly, the appellants are permitted to file application under Section 17 of the Act. In case such an application is filed, learned Arbitrator to decide the same on its own merits after hearing the parties to the

arbitration without being influenced by the observations made by the District Judge in the impugned order dated 13th September 2006. In view of the statement made by Advocate Chandurkar that the respondents shall not create third party rights in respect of the suit mines till the application seeking interim measures is decided by the learned Arbitrator. Needless to mention that the observations made by learned District Judge in the impugned order would not be conclusive for the purpose of deciding application for interim measure by the Arbitrator.

The appeal is disposed of in the aforesaid terms with no order as to costs.

JUDGE

A.